

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellants: Pugel, M. A. et al.

Examiner: Jeong S. Park

Serial No. 10/534,450

Group Art Unit: 2454

Filed: May 10, 2005

Docket No. PU030231

Title: CONVERSION OF ALERT MESSAGES FOR DISSEMINATION  
IN A PROGRAM DISTRIBUTION NETWORK

Customer No: 24498

**SUBSTITUE APPEAL BRIEF**

Commissioner for Patents  
Post Office Box 1450  
Alexandria, Virginia 22313-1450

Sir:

This is a substitute Appeal Brief which is being filed in response to the Notification of Non-Compliant Appeal Brief under 37 C.F.R. 41.37. The fee for the previous Appeal Brief was already charged to Deposit Account 07-0832. Please charge this Deposit Account for any fees owed for the submission of this Appellants' Brief and for any Extension of Time required for submission of this Brief.

No oral hearing is requested.

## **I. REAL PARTY IN INTEREST**

The real party in interest in this appeal is Thomson Licensing Inc., the assignee of record.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

## **III. STATUS OF CLAIMS**

The status of all of the claims remaining in the application, claims 1 – 12 and 13 - 16 is set forth in Appendix A of this Brief.

Claim 13 has been canceled.

Claims 1 – 12 and 14 - 16 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Manson et al. (US Patent No. 6543051, hereafter referred to as “Manson”) in view of Pinder (US Patent No. 6112074, hereafter referred to as “Pinder”).

Claim 6 has been further rejected under 35 U.S.C. 103(a) as unpatentable over Manson in view of Pinder and further in view of Adler (US Patent No. 6505203, hereafter referred to as “Adler”).

## **IV. STATUS OF AMENDMENTS**

All amendments prior to this Appeal have been entered.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

### **INDEPENDENT APPARATUS CLAIM 1**

The invention of claim 1 relates to a system for inserting “Alert” information into broadcast programming that is transmitted by a program distributor 18 over a program distribution network 20 such as a cable TV network (see FIG. 1). The system receives “Alert” information (e.g. hazardous weather, terrorist activity, missing person, etc.) in a first format comprising one or more SAME (“Specific Area Message Encoding”) codes and converts the Alert information to a second format (MPEG-2) which is compatible with the programming being broadcast via the distribution network (see FIG. 5, page 6, lines 32 to page 7, line 5).

The program distributor 18 inserts the converted “Alert” information into the broadcast programming via the program distribution network 20 so that the Alert message supercedes other transmissions being broadcast over the network (page 6, lines 22 to page 7, line 18) when an alert is to be received. The converted Alert is formatted into an MPEG transport packet where a packet identifier (PID) in the header of the transport packet identifies the content of the transport packet as being an Alert message instead of being at least one of audio information and video information as would be the case for ordinary broadcast programming (page 5, lines 15-20). The Alert message is transmitted to a user when geographic data in the message corresponds to (matches) that of the user (page 5, line 31 to page 6, line 9).

#### INDEPENDENT METHOD CLAIM 7

The language in the specification describing the method steps of the method of claim 7 closely follows that of the structural elements of apparatus claim 1 as set forth above. In addition, the method of claim 7 recites the step of “receiving an alert message” (e.g. hazardous weather, terrorist activity, missing person, etc.) “in a proprietary format

comporting to a SAME (i.e. Specific Area Message Encoding) message” (page 5, lines 1-20).

Claim 7 further recites “translating the alert message” to a second format (e.g., MPEG-2) which is compatible with a broadcast signal used for transmitting broadcast programming (see references above and also page 6, lines 32 to page 7, line 5 and FIG.5).

The translated alert message is transmitted “with the broadcast programming”. The translated alert message “is formatted into an MPEG transport packet where the packet identifier (PID) in the header of the transport packet identifies the content of the transport packet as being an alert message instead of being at least one of audio information and video information” as compared with the case for ordinary broadcast programming (page 5, line 15-20, and page 6, lines 22 to page 7, line 5).

The step of transmitting the alert message is further specified as occurring when geographic data in the message corresponds to (matches) geographic area corresponding to that of a user that receives broadcasting programming from the program distributor (page 5, line 31 to page 6, line 9).

#### INDEPENDENT METHOD CLAIM 12

Independent method claim 12 is similar in many respects to independent method claim 7 and is supported in large part in the specification in the same manner as claim 7.

In addition, the method of claim 12 recites the added initial step of “transmitting broadcast programming in an MPEG-2 compatible data stream” (page 5, line 1-14).

Claim 12 further recites the step of “receiving the alert message” (e.g. hazardous weather, terrorist activity, missing person, etc.) “in a proprietary format which comports to a SAME (i.e. Specific Area Message Encoding) message” (page 5, line 1-20).

Claim 12 further recites “converting the alert message” ----- “formatted into an MPEG-2 transport packet where the packet identifier, etc.” (see claim 7 above, also page 6, line 32 to page 7, line 5 and FIG. 5) .

Claim 12 further substantially follows the language of claim 7 set forth above relating to matching geographic data in an alert message with the geographic area corresponding to a user (see claim 7 above and page 5, line 31 to page 6, line 9).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

A. Claims 1-12 and 14 – 16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) in view of a combination of Manson in view of certain aspects of Pinder.

B. Dependent claim 6 has been further rejected under 35 U.S.C. § 103(a) as being unpatentable over Manson in view of Pinder and further in view of Adler.

## **VII. ARGUMENT**

### **A. REJECTION OF CLAIMS 1 - 12 and 14 - 16 UNDER 35 U.S.C. § 103(a)**

In the case of the non-final Rejection of all of the remaining claims under 35 U.S.C. § 103(a), as being obvious in view of a combination of elements of Manson in view of Pinder or further in view of Adler (claim 6), it is respectfully submitted that no *prima facie* case of obviousness has been made out by the Examiner based on the recited combination(s) of references.

#### **1. GENERAL STATEMENT OF PROPER BASIS FOR REJECTIONS UNDER 35 U.S.C. § 103(a)**

In a “Notice” dated October 3, 2007, the Director of the USPTO promulgated “Examination Guidelines For Determining Obviousness Under 35 USC 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex, Inc.*”, 550 U.S. \_\_\_\_\_, 127 S. Ct. 1727, 82 USPQ2d 1385, decided April 30, 2007 .

In the “Guidelines”, the Director stated:

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.* Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;

(2) Ascertaining the differences between the claimed invention and the prior art;

and

(3) Resolving the level of ordinary skill in the pertinent art.”

The “Guidelines” provide specific “rationales” for supporting a legal conclusion of obviousness based on combinations of references as follows (emphasis added):

“The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.

The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. (emphasis added). The Court quoting *In re Kahn*, [citation omitted] stated that ‘[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’.

#### Rationales

(A) Combining prior art elements according to known methods to yield predictable results;

(B) Simple substitution of one known element for another to obtain predictable results;

(C) Use of known technique to improve similar devices (methods, or products) in the same way;

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

(E) “Obvious to try” – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.” .

The “Guidelines” go on to recognize the continued viability of the TSM rationale (item “G”) as follows:

“If the search of the prior art and the resolution of the Graham factual inquiries reveal that an obviousness rejection may be made using the familiar teaching-suggestion-motivation (TSM) rationale, then such a rejection using the TSM rationale can still be made. Although the Supreme Court in *KSR* cautioned against an overly rigid application of TSM, it also recognized that TSM was one of a number of valid rationales that could be used to determine obviousness”.

In *KSR International Co. v. Teleflex, Inc. et al., supra*, (see Section “B”, pages 14 – 15 of the published decision), the U. S. Supreme Court discussed this requirement of “teaching, suggestion or motivation” and stated:

“When it first established the requirement of demonstrating a teaching, suggestion or motivation to combine known elements in order to show that the combination is obvious, the Court of Customs and Patent Appeals captured a

helpful insight. See *Application of Bergel*, 292 F. 2d 955, 956 – 957 (1961). -----

In the years since the Court of Customs and Patent Appeals set forth the essence of the TSM test, the Court of Appeals no doubt has applied the test in accord with these principles in many cases. There is no necessary inconsistency between the idea underlying the TSM test and the Graham analysis”.

The “Graham analysis” refers to the three required factual inquiries set out in *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1 (1966) mentioned above.

It is therefore respectfully submitted that under the published guidelines incorporating the latest Supreme Court decision (the *KSR* case) the Examiner is required to find all elements of the claims in citable references or sources, to identify all missing elements (“ascertain— the differences”); to find such references which teach, suggest and/or motivate the person of ordinary skill to combine such elements in the manner set forth in the rejected claims, and provide a “clear articulation of the reason(s) why the claimed invention would have been obvious” (*KSR supra*, emphasis added) . The *KSR* opinion requires that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”. In the absence of references disclosing all of the claimed elements, and the showing of a teaching, suggestion or motivation to combine such claimed elements in the manner claimed, and a clear statement and rational analysis of its basis, an obviousness rejection cannot stand.

To summarize, in order to establish a *prima facie* case of obviousness, all of the foregoing basic criteria must be met. That is, the prior art references when combined must teach or suggest all of the claim limitations. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine them as claimed. Finally, there must be a reasonable expectation of success for the proposed combination of elements. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's own disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Patent examiners cannot rely on their own knowledge as a basis for rejecting patent applications without the citation of specific evidence (references) having a teaching, suggestion or motivation to modify a reference or to combine two or more references ; *In re Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002).

The examiner bears the burden of establishing a *prima facie* case of obviousness and “can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988, emphasis added).

Absent the elements or the showing of a teaching, suggestion or motivation to combine such elements as claimed, an obviousness rejection cannot stand.

## 2. THE DISCLOSURE IN U.S. PATENT NO. 6,543,051 – MANSON ET AL.

Manson describes a system for inserting an emergency alert message (EAM) into a digital subscriber television system. Like the present invention, Manson’s digital subscriber television system 201 “uses MPEG transport streams for delivery of video, audio and data entertainment services” (col. 2, lines 57 – 60). These MPEG transport streams convey the ordinary TV signals in a customary manner. As the Examiner has recognized, Manson transmits “MPEG formatted information from the application servers ---- as the in-band data” (rejection, page 3). Thus, “in-band data” is the main entertainment services information or TV programming.

However, as will be shown below, the Examiner incorrectly concludes that Manson discloses converting alert information from a SAME (Specific Area Message Encoding) code format to a second format “compatible with the programming broadcasted via the program distribution network” (claim 1) or “compatible with a broadcast signal used for transmitting the broadcast programming” (claim 7). Manson says only that his system converts alert messages into a text file (or an audio file) “compatible with the digital subscriber system, such as an HTML or ASCII display file” (or RIFF Wave or AIFF audio file, as the case may be) – see col. 4, lines 55 – 65, but does not refer to compatible with the programming broadcast.

Further, the Examiner incorrectly concludes that Manson discloses inserting “the converted alert into the broadcast programming” (claim 1, also see

claim 7 “transmitting the translated alert message with the broadcast programming”, and claim 12 “converting the alert message into data that is inserted into packets ---MPEG-2 data stream”) in Manson’s “in-band delivery path” (rejection, bottom of page 3). It will be demonstrated below that Manson discloses an “out-of-band” delivery path for the alert message and does not disclose inserting the alert message “into the broadcast programming”. Finally, the Examiner incorrectly concludes (without any suggestion from Manson) that “the converted alert is formatted into an MPEG transport packet” (claim 1, see also similar language in claim 7 and claim 12 above) – see rejection, top of page 4 – which is processed via Manson’s “in-band delivery path”. MPEG transport packets in an in-band delivery path is clearly not what Manson discloses.

The cited Manson patent itself is silent regarding which delivery path (in-band or out-of-band) is used to pass alert information to a subscriber. However, at column 2, lines 32 – 39 of the cited Manson patent, Manson identifies and incorporates by reference his U.S. Provisional Patent Application No. 60/143,835 (the “priority” application).

Copies of relevant hand numbered pages 5, 37 – 39 and 42 of that priority document, as they appear in the PAIR database of the USPTO, are attached as evidence in APPENDIX B of this BRIEF.

On page 5 of the priority application, Manson provides a diagram of an “MMM System”, i.e. a MultiMedia Message system, including an “Emergency Alert Receiver Server (EARS)” coupled to a “MultiMedia Message Server (MMMS)”. A “DHCT” (Digital Home Communications Terminal) is provided at

the end of the illustrated signal path. These elements are also described in the cited Manson patent.

On page 37 of the priority document (“2.1.6.1 MMM Request”), the manner of sending an Emergency Alert Message (EAM) in Manson’s system is described. Manson specifically states there that “These files will be sent through an out of band data carousel ---“ (emphasis added). Following this statement, Manson’s “format of the payload” (the Emergency Alert Message) is presented in a table on pages 38 -39 of the priority document. This format corresponds substantially to what is shown in Table I of the cited Manson patent as “An exemplary embodiment of a digital emergency alert message of the present invention” of the Manson patent. Manson repeatedly refers to his format of Table 1 as a “unique format” (col. 5, lines 6 – 20) and, contrary to the Examiner’s stated position, never mentions anything about an MPEG format in connection with his alert messages.

Thus, it is clear from the priority application that alert information is sent by Manson via an “out-of-band” path using a “unique format” (not MPEG).. The Examiner’s conclusion that Manson discloses “the application servers distribute the converted emergency alert message with the television program ----- with in-band delivery path” (rejection, bottom of page 3, emphasis added) is incorrect and contrary to what Manson states in the priority application (which is incorporated by reference into the cited Manson patent).

Thus, Manson does not disclose that he distributes the alert message “with the television program” using the “in-band delivery path”, does not describe that

“The program distributor inserts the converted alert into the broadcast programming”, and does not produce a “converted alert – formatted into an MPEG transport packet” as assumed and asserted by the Examiner in the rejection. There is simply no support for the Examiner’s stated conclusions.

The foregoing analysis is submitted to be the appropriate required comparison of the claimed invention with the prior art as set forth in the obviousness “Guidelines” set forth above. The Examiner’s analysis is submitted to be incorrect and the Examiner has not found all elements of the claimed combinations in the cited Manson reference.

Rejected independent method claims 7 and 12 are submitted to be patentable for the reasons presented above in distinguishing independent apparatus claim 1 over Manson.

## 2. THE DISCLOSURE IN U.S. PATENT NO. 6,112,074 – PINDER

Pinder is cited by the Examiner to supply elements of the rejected claims which are missing from Manson. However, none of the elements pointed out above as missing from Manson can be found in Pinder. In fact, Pinder has nothing to do with broadcast programming distribution or MPEG formats or inserting alert information into such signals. Pinder does not fill any of the gaps in Manson pointed out above and cannot be combined in any manner with Manson to render obvious the combinations of claim elements discussed above.

Specifically, Pinder only describes a cell telephone system for voice messaging which is augmented with transmission of emergency local weather information

(Pinder, col. 1, lines 20 – 23) to specific cell antenna towers (sites) located in threatened geographic areas. The system has nothing to do with broadcast programming, broadcast signal formats or image displays.

In the rejection (pages 4 – 5), the Examiner’s entire reliance on Pinder is set forth as follows:

“The radio communication system obtains event and locality information, and uses the locality information to transmit the event information to subscribers of that system potentially affected by the event (see, e.g., abstract and figure 3); and Transmitting the alert information in the form of SAME (a NOAA station broadcasts weather and emergency event information in a digital message using a Specific Area Message Encoding (SAME) protocol, see, e.g. col. 2, lines 23 – 41 and figure 1).

It would be obvious to combine Manson with Pinder in order the system of Manson to leave uninterested geographic region undisturbed and avoid a “Boy Who Cried Wolf” problem for the affected geographic region”.

It is apparent from the language of the rejection quoted immediately above that Pinder discloses nothing which corresponds to the claim elements missing from Manson as pointed out above. Furthermore, there is no teaching, suggestion or motivation disclosed in either reference (or identified by the Examiner) of how or why one could combine anything from the two references to bridge the informational gaps between the two.

Pinder relies on the characteristic of cell phone systems that each “site” (antenna tower) in a cell phone system is inherently limited to sending signals a

relatively short distance and the recipients of an emergency alert message can therefore be geographically selected. However, as described, this system would omit sending alert messages to cell phone users in the threatened area that were passing through and, probably, also cell phone users normally in the threatened area who were outside of it when an alert message was sent. Pinder operates in a substantially different environment than Manson (or the present invention), using different signal formats and as such, is not combinable with Manson to provide a useful system. As noted above, there is no teaching, suggestion or motivation in either Pinder or Manson to combine anything from these two references. The Examiner is simply using Appellants' disclosure as a roadmap to find bits and pieces of the presently claimed invention. Such a piecemeal attempt to reconstruct the claimed invention is not an appropriate basis for a finding of obviousness.

It is submitted that no basis has been presented on which a *prima facie* case of obviousness may be established as to any of independent claims 1, 7 and 12 based on what is disclosed separately by each of Manson and Pinder.

### 3. THE DISCLOSURE IN U.S. PATENT NO. 6,505,203 – ADLER

Adler is cited by the Examiner to supply a single element of dependent claim 6 which the Examiner acknowledges is missing from both Manson and Pinder. Specifically, the Examiner states:

“Manson in view of Pinder do not explicitly teach the alert class is including an alert related to a missing person.”

However, Adler does not disclose any of the other several elements of the

rejected independent claim 1 (from which claim 6 depends) which have been pointed out above as missing from Manson and Pinder.

Adler relates to a significantly different internet based information handling system using a predetermined network of selected e-mail recipients in an analytically determined geographic area to quickly spread a missing person's alert in that selected geographic area. Since Adler is concerned only with missing persons, his system has nothing to do with broadcasting such things as a weather alert to everyone in a geographic area (as described in claim 1). There is no teaching, suggestion or motivation in any of the references to combine what Adler discloses with Manson and Pinder to even suggest or arrive at all elements of claim 1. Therefore, claim 6, like claims 1, 4 and 5 from which it depends, cannot be found to be obvious over any combination of Manson in view of Pinder and further in view of Adler.

## **VIII. CONCLUSION**

It is respectfully submitted that there is no combination of Manson with Pinder which can be said to disclose, teach, suggest to or motivate a person of ordinary skill to combine these two references to arrive at any of the claimed apparatus or method combinations of claims 1 – 12 and 14 – 16.

The Examiner has not identified any reference or combination of references which discloses or suggests all elements of any of the independent claims 1, 7 or 12. In view of the significant differences between Appellants' claimed invention and the method/system disclosed by any of Manson, Pinder and

Adler, and the fact that those references do not provide any teaching, suggestion or motivation for modifying any of their disclosures so as to arrive at Appellants' claimed methods/apparatus, no *prima facie* basis has been established for supporting a conclusion of obviousness of any of claim 1 – 12 and 14 – 16.

The Examiner has attempted to bridge the gaps between the cited references Angal and the rejected claims by using Appellants' disclosure as a roadmap. However, as shown above, the gap between the claims and what the references disclose has not been closed and there is no combination of these references which meets the appealed claims or renders the appealed claims obvious.

Appellants therefore assert that claims 1 – 12 and 14 - 16 are patentable. Appellants request the reversal of the rejection of all claims and allowance of claims 1 – 12 and 14 - 16.

## **IX. CLAIMS APPENDIX**

A complete listing of the claims involved in this appeal is attached hereto as Appendix A.

## **X. EVIDENCE APPENDIX**

Appellant has submitted additional evidence comprising five (5) pages of U.S. Provisional Application No. 60143385, a Priority application for Manson, which are included in Appendix B attached.

## **XI. RELATED PROCEEDINGS APPENDIX**

Appellant states that there are no relevant related proceedings and, an Appendix C is hereby attached indicating "none."

Respectfully submitted,

/Joel M. Fogelson/

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Attachments:

Appendix A: Claims on Appeal

Appendix B: Evidence

Appendix C: Related Proceedings

## APPENDIX A

### **CLAIMS ON APPEAL**

The following is a listing of all claims, pending, or canceled, incorporating all elements and revisions to date. All non-canceled claims are on appeal, canceled claims being canceled without prejudice or disclaimer.

1. (amended) A system for inserting alert based information into broadcast programming over a program distribution network comprising:
  - a program distributor that transmits the broadcast programming over the program distribution network; wherein
    - the program distributor receives the alert based information and converts the alert from a first format comprising at least one SAME code to a second format compatible with the programming broadcasted via the program distribution network; and
    - the program distributor inserts the converted alert into the broadcast programming via the program distribution network when a geographic data in said alert message matches a geographic region corresponding to a user that receives said broadcasting programming from said program distributor, and said alert based information is not transmitted when said geographic data in said alert message does not match said geographic region corresponding to said user;
  - the converted alert is formatted into an MPEG transport packet where the packet identifier (PID) in the header of the transport packet identifies the content of the

transport packet as being an alert message instead of being at least one of audio information and video information.

2. (amended) The system of Claim 1, wherein the converted alert and the programming broadcasted via the program distribution network are capable of being rendered on at least one of a display device and an audio based device.

3. (amended) The system of Claim 1, wherein the alert based information received is an audible based message that is converted into data capable of being broadcasted over the program distribution network for rendering on an audio device.

4. (original) The system of Claim 1, wherein the program distributor adds supplemental information to the alert based information for broadcast; the supplemental information selected is based on data in the alert based information.

5. (original) The system of Claim 4, wherein the supplemental information selected is determined by the geographic region corresponding to an alert based information and the alert class of the alert based information.

6. (amended) The system of Claim 5, wherein the alert class is including an alert related to a missing person.

7. (amended) A method for inserting alert based information into broadcast programming over a program distribution network comprising the steps of:

receiving an alert message in a proprietary format comporting to a SAME message;

translating the alert message from the proprietary format into a second format compatible with a broadcast signal used for transmitting the broadcast programming; and

transmitting the translated alert message with the broadcast programming, when a geographic data in said alert message matches a geographic area corresponding to a user that receives said broadcasting programming from said program distributor, and said alert based information is not transmitted when said geographic data in said alert message does not match said geographic area corresponding to said user, wherein

the translated alert message is formatted into an MPEG transport packet where the packet identifier (PID) in the header of the transport packet identifies the content of the transport packet as being an alert message instead of being at least one of audio information and video information.

8. (amended) The method of Claim 7, wherein the alert message received is an audible based message that is converted in data capable of being broadcasted over a program distribution network for rendering on an audio device.

9. (amended) The method of Claim 7, wherein supplemental information is added to the alert message; the supplemental information selected is based on data in the alert information.

10. (amended) The method of Claim 9, wherein the supplemental information selected is determined by the geographic region corresponding to the alert based information and the alert class of the alert based information.

11. (amended) The method of Claim 7, wherein the programming is broadcasted in an MPEG compatible data stream.

12. (amended) A method for translating a received alert message into a format capable of being broadcasted as part of a data stream comprising the steps of:

transmitting broadcast programming in an MPEG-2 compatible data stream;

receiving the alert message in a proprietary format which comports to a SAME message; and

converting the alert message into data that is inserted into packets used for transmitting the MPEG-2 compatible data stream when a geographic data in said alert message matches a geographic area corresponding to a user that receives said broadcasting programming from said program distributor, and said alert based information is not transmitted when said geographic data in said alert message does not match said geographic area corresponding to said user, wherein

the converted alert message is formatted into an MPEG-2 transport packet where the packet identifier (PID) in the header of the transport packet identifies the content of

the transport packet as being an alert message instead of being at least one of audio information and video information.

13. (canceled).

14. (amended) The method of Claim 12, wherein the alert message received is an audible based message that is converted into data capable of being broadcasted over the a program distribution network for rendering on an audio device.

15. (amended) The method of Claim 12, wherein supplemental information is added to the alert message; the supplemental information selected is based on data in the alert information.

16. (amended) The method of Claim 15, wherein the supplemental information selected is determined by the geographic region corresponding to the alert based information and the alert class of the alert message.

## **APPENDIX B**

### **EVIDENCE**

U. S. Provisional Patent Application No. 60/143835, filed July 14, 1999 (available on PAIR, USPTO website);

- B-1 Page 5 (hand numbered) entitled “Appendix A – MMM System Diagram;
- B-2 Page 37 (hand numbered) heading “2.1.6 Multimedia Message Server (MMMS)” including reference to “out of band data carousel”;
- B-3 Page 38 (hand numbered) data table depicting a digital message format;
- B-4 Page 39 (hand numbered) continuation of table on page 38;
- B-5 Page 42 (hand numbered) heading “2.1.6.2 MMMConfig Request” including reference to (out-of-band) “data carousel”.

## **APPENDIX C**

### **RELATED PROCEEDINGS**

None